REMARKS

Claims 1, 4-8, 10, 13, 19, 29-34, 45 and 84-91 are pending in the application. Claims 1, 7, 8, 10, 13, 19, 32-34, 45, 84 and 88-91 stand rejected under 35 USC § 102(b) as being anticipated by Counts, U.S. Patent No. 5,060,671. Claims 4, 29 and 85 stand rejected under 35 USC § 103(a) as being unpatentable as obvious over Counts. Claims 5, 6, 30, 31, 86 and 87 stand rejected under 35 USC § 103(a) as being unpatentable over Counts and further in view of Rabinowitz, U.S. Patent No. 6,783,753. For the reasons set forth in detail below, Applicants respectfully request reconsideration of the application, withdrawal of all rejections and allowance of the application.

Amendments to the Claims

Claim 1 is amended to recite providing a substrate having first and second ends upon which a physiologically active compound has been deposited *as a unit dose on a compound deposition area* and has further been amended to recite generating a moving heating zone that traverses the compound deposition area to sequentially heat the compound on the compound deposition area exposed to the heating zone to produce a vapor. Support for this amendment is found at page 25, line 28 – page 26, line 4 and page 39, line 22 – page 40, line 29.

These amendments are intended to make it clear that claim 1 is directed to a method of delivering a unit dose deposited on a compound deposition area of a substrate by generating a moving heating zone that traverses the compound deposition area to thereby sequentially heat the compound on the compound deposition area. In this manner, a single dose of a compound on a compound deposition area is progressively vaporized as the moving heating zone sequentially heats the compound. As a result, relatively small portions of the compound are sequentially heated and vaporized to better control the concentration of the vaporized compound introduced to a stream of air to allow for the control of particle size.

Claim 19 is also amended to clarify *a unit dose* of a physiologically active compound is deposited in a compound deposition area and a zone of the compound deposition area is heated which has a surface area less than the compound deposition area. The size of the heated compound is progressively increased to vaporize all of the compound in the compound deposition area. Like the method recited in claim 1, this method provides for sequential heating of a unit dose within a compound deposition area to better control particle size.

Finally, independent claim 84 is similarly amended to recite a substrate onto which *a unit dose* of a physiologically active compound is deposited to define a *compound deposition area* and moving a heated zone with respect to the substrate to progressively vaporize compound within the compound deposition area exposed to the heated zone. As with claim 1, the recited method enables better control of aerosol particle size.

Claim Rejections under 35 USC § 102

The Examiner contends that Counts anticipates claims 1, 19 and 84 because Counts teaches a heater that moves. While Counts does teach a heater that moves, Counts fails to anticipate claims 1, 19 and 84 as amended.

Anticipation requires that "a reference must disclose every element of the challenged claim and enable one skilled in the art to make the anticipating subject matter." *PPG Industries. Inc. v. Guardian Industries Corp.*, 75 F.3d 1558, 1566, 37 USPQ2d 1618, 1642 (Fed. Cir. 1996), *see also* MPEP §2131 citing *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ2d 1051 (Fed. Cir. 1987). Counts is directed to a device configured to individually heat each of a plurality of charges of a compound (see e.g., column 2, lines 1-7). In this manner, as each of the charges is heated, a "puff" of a flavor-containing substance is delivered to a user. Thus, in Counts an entire charge of flavor generating medium is contained within a heated zone and is heated at the same time. Counts does not contemplate moving a heated zone relative to a compound deposition area to sequentially vaporize portions of a unit dose of a compound on a compound deposition area.

The embodiments described in column 7, lines 23-46 of Counts teach a heater that moves relative to a substrate, but do not teach that the heater moves relative to the substrate while simultaneously heating portions of a compound deposition area containing a unit dose to thereby sequentially heat the compound deposition area. The embodiment discussed at column 7, lines 23-46 (cited in paragraphs 1 and 5 of the Office Action) teaches "serially heating each pair of opposed segments 722, 723 by conduction, convection or radiation as it is moved in the direction of the arrow A." The specification of Counts makes it clear that this structure provides indexed movement of the collar between adjacent segments 722, 723 followed by uniform heating of the entire segment. Nothing in Counts teaches or suggests desirability of moving a heating zone to sequentially heat a single compound deposition area for controlled release of a compound

deposited on the compound deposition area.

As Counts fails to disclose "generating a moving heating zone that traverses the compound deposition area in a direction from the first end to the second end, thereby sequentially heating a compound on the compound deposition area exposed to the heating zone to produce vapor", Counts cannot anticipate claim 1. Likewise, as Counts fails to disclose heating a zone of a compound deposition area, wherein "the heated zone is a surface area of less than a compound deposition area" and "increasing the size of the heated zone to progressively vaporize a compound exposed to the heated zone", Counts cannot anticipate claim 19. Furthermore, as Counts does not teach "moving the heated zone with respect to the substrate to progressively vaporize a compound within the compound deposition area exposed to the heated zone" as recited in claim 84, claim 84 cannot be anticipated by Counts.

Accordingly, Applicants respectfully request that the Examiner reconsider and withdraw the rejection of independent claims 1, 19 and 84 as being anticipated by Counts. Moreover, claims 7, 8, 10 and 13, which are dependent from claim 1, are believed allowable for the same reasons set forth above with respect to claim 1. Further, claims 32-34 and 45, which are dependent from claim 19, are believed allowable for the same reasons set forth above with regard to claim 19. Finally, claims 88-91, which are dependent from claim 84, are believed allowable for the same reasons set forth above with respect to claim 84.

Claim Rejections Under 35 USC § 103

Applicants further submit that claims 4, 29 and 85, which are dependent from claims 1, 19 and 84, respectively, are not obvious over Counts for the same reasons set forth above that claims 1, 19 and 84 are not anticipated by Counts.

Claims 5, 6, 30, 31, 86 and 87 are rejected as being unpatentable over Counts in further view of Rabinowitz, U.S. Patent No. 6,783,753. Applicants respectfully submit Rabinowitz fails to teach a moving heating zone that traverses a compound deposition area to sequentially heat a compound on the compound deposition area. Thus, Applicants respectfully submit a combination of Counts and Rabinowitz cannot render obvious claims 5, 6, 30, 31, 86 and 87.

For the reasons set forth above, Applicant respectfully submits the claims as amended are allowable over the art of record and reconsideration and issuance of a notice of allowance are

respectfully requested. If it would be helpful to obtain favorable consideration of this case, the Examiner is encouraged to call and discuss this case with the undersigned.

This constitutes a request for any needed extension of time and an authorization to charge all fees therefore to deposit account No. 19-5117, if not otherwise specifically requested. The undersigned hereby authorizes the charge of any fees created by the filing of this document or any deficiency of fees submitted herewith to deposit account No. 19-5117.

Respectfully submitted,

/TD Bratschun/

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